



*Refused*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of:	)	
	)	
Sundram et al.	)	Reissue application:
	)	90/007,444
US Patent No. 6,630,192	)	filed: 3/3/2005
(from Appl. No. 09/828,448)	)	
	)	Examiner: M.Donovan
Issued: October 7, 2003	)	
(filed Apr 6, 2001)	)	Art Unit: 1761

For: Increasing the HDL Level and the HDL/LDL Ratio in Human Serum by Balancing Saturated and Polyunsaturated Dietary Fatty Acids

Response to Patent Owner's Statement

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

This communication is in response to the Patent Owner's Statement and Amendment filed on July 5, 2005 concerning US Patent No. 6,630,192 ("Sundram '192").

The Patent Owner argues strongly that the prior art document, PORIM technology "The Use of Palm Oil Products in Margarines," ("PORIM article") only discloses an oil composition and does not disclose a margarine. However, the article is clearly intended to disclose an oil composition for use in a margarine. The article refers to standard margarine processing technologies well known to those of ordinary skill in the art at the time the article was written, significantly before the filing date of the Sundram patent at issue. Further, the article states that the fat component represents 80 – 85% of margarine while the remainder is an aqueous component including salt, milk products and, optionally, coloring.

The Patent Owner points to Blend# 5 on page 5 of the PORIM article as showing only an oil blend. However, it is clear from the remainder of the PORIM article that Blend #5 is to be incorporated into a margarine as described in numerous other sections of the PORIM article. In fact, the title of the section in which Blend #5 appears is "Tub Margarine."

The Patent Owner states that it is not aware of any margarine product created from Blend #5 prior to the disclosure of the Sundram '192 patent, a fact which is irrelevant to the patentability of the Sundram '192 patent.

While the PORIM article states that changes to the disclosed blends might be needed to approximate a particular brand of margarine, which could require experimentation, there is no requirement to change a disclosed blend. If a margarine is created which does not change, for example, Blend #5, one of ordinary skill in the art at the time the article was written and at the time the Sundram '192 patent was filed would be able to create a margarine from the disclosed Blend #5 including the elements disclosed in the PORIM article (an aqueous solution of salt and milk products). Such a margarine would fall within the scope of the claims of the Sundram '192 patent.

Although the Patent Owner is of the opinion that it would be possible, through numerous adjustments to the disclosed blends, to create margarine which is not covered by the Sundram '192 patent, this does not prevent the practice of a blend disclosed in the PORIM article. In the present case, the disclosure of Blend #5 falls clearly within the scope of the claims at issue.

The Patent Owner states the claims of the Sundram '192 patent include a limitation with respect to the amount of elaidic acid and that a margarine based on Blend #5 could not include less than 1% of elaidic acid (the claim language is actually "elaidic acid or other unnatural trans fatty acids") as required by the claim. However, Requestor has in fact created a margarine from Blend #5 which includes 0.8% of trans fatty acids by weight. In fact, Patent Owner's licensee has tested this margarine and has determined independently that this margarine includes less than 1% by weight of trans fatty acids (see Attachment 1), thus contradicting Patent Owner's statement that such a trans fatty acid content is not inherent in Blend #5.

The Patent Owner states that the teaching of the PORIM article necessarily teaches adjustment to each disclosed blend, however this is not stated in the PORIM article. On page 4,

the article states that the blends "can be adjusted by minor changes to meet the requirements of specific markets." There is no requirement to change the blends.

The Patent Owner states that there is no suggestion to use the disclosed blends in healthier (i.e., low or no-cholesterol, lower fat, lower saturated fat) margarines. The PORIM article specifically discusses using the disclosed blends in "low calorie" or "slimmers" foods (see pages 1 and 4), thus teaching that the blends are healthy substitutes to butter and a clear teaching that the blends are options for healthier margarines.

III. Conclusion.

For the reasons noted above, it is respectfully requested that claims 1-64 of the Sundram, *et al.* patent are not patentable in view of the PORIM article.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kimberly A. Chasteen", followed by a large, stylized circular flourish.

Kimberly A. Chasteen  
Reg. No. 36,755

Date: September 6, 2005

Williams Mullen  
721 Lakefront Commons  
Suite 200  
Newport News, VA 23606

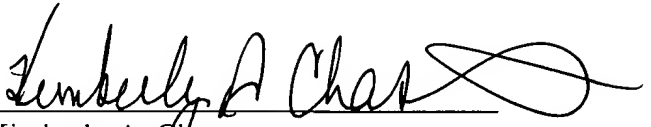


### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Patent Owner's Statement and Amendment regarding Application/Control No. 90/007,444 was served on the Attorney for Patent Owner today by First Class Mail to:

Richard J. Warburg  
Foley & Lardner LLP  
P.O. Box 80278  
San Diego, CA 92138

Dated: September 6, 2005

  
\_\_\_\_\_  
Kimberly A. Chasteen  
Williams Mullen  
721 Lakefront Commons, Suite 200  
Newport News, VA 23606



## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450 on 6 Sep 2005.

Kimberly A Chasteen  
Printed or typed name of person signing certificate

Kimberly A Chasteen  
Signature of person signed the certificate

6 Sep 2005  
Date of signature



*Paul  
Sueyge*

January 11, 2005

Mr. Connie Sauer, President  
C.F. Sauer Company  
2000 W. Broad St.  
Richmond, VA 23220

Dear Mr. Sauer:

The purpose of this letter is to advise you that a margarine formulation made by your company may be infringing Brandeis University's patents #5,578,334; #5,843,487 and #6,630,192. Your formulation has been sold to at least one customer that we know of, namely, Jason's Deli of Las Vegas, NV.

GFA Brands, marketer of Smart Balance and Earth Balance brands, utilizes these patents under world-wide license from Brandeis University. Since we have invested tens of millions of dollars in marketing these products for many years, we are, naturally, concerned about this possible violation of our rights.

Since we know that C.F. Sauer is an honorable company, based on our own personal experience when you provided contract manufacturing services to us in past years, and is staffed with honorable people, we want to make you aware of this issue so that you may explore it as soon as possible.

Our license for this technology obligates us to defend the patents in question and, therefore, we would greatly appreciate your letting us know the results of your investigation into this matter.

We ordered a third-party laboratory analysis of your product with the following results:

	Analysis	Patent
Saturated fatty acids	33.0%	20-40%
Linoleic Acid	30.3%	15-40%
Trans fatty acids	0.5%	<1%

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Harris", written over a horizontal line.

Robert M. Harris  
President & CEO

RMH:jd